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OFFICE OF PETITIONS

In re Application of :
Maximilano Zenti :
Application No. 09/913,317 :
Filed: 10 August, 2001 :
Att'y Docket No. 35105 :

ON PETITION

This is a decision on the petition under 1.137(b),¹ filed on 26 August, 2004, to revive the above-identified application.

The petition is **DISMISSED**.

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.137(b)." This is not a final agency decision.

¹Effective December 1, 1997, the provisions of 37 CFR 1.137(b) now provide that where the delay in reply was unintentional, a petition may be filed to revive an abandoned application or a lapsed patent pursuant to 37 CFR 1.137(b). A grantable petition filed under the provisions of 37 CFR 1.137(b) must be accompanied by:

(1) the required reply, unless previously filed. In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In a nonprovisional application filed on or after June 8, 1995, and abandoned for failure to prosecute, the required reply may also be met by the filing of a request for continued examination in compliance with § 1.114. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof. In an application abandoned for failure to pay the publication fee, the required reply must include payment of the publication fee.

(2) the petition fee as set forth in 37 CFR 1.17(m);

(3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional; and

(4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required pursuant to 37 CFR 1.137(c)).

This application became abandoned on 7 May, 2004, for failure to timely reply to the non-final Office action mailed on 6 February, 2004, which set a three (3) month shortened statutory period for reply. No extensions of the time for reply in accordance with 37 CFR 1.136(a) were obtained. The filing of the present petition precedes the mailing of Notice of Abandonment.

Although the petition form filed on 26 August, 2004, states that the petition fee is enclosed, no petition fee is present among the papers filed on 26 August, 2004.

In the absence of the petition fee, which is required by law, the PTO can only treat the instant petition as a (feeless 1.181) petition to withdraw the holding of abandonment.

The PTO will not reach the merits of any petition under 37 CFR 1.137 lacking the requisite petition fee.²

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

By FAX: (703)872-9306
Attn: Office of Petitions

By hand: U.S. Patent and Trademark Office
220 20th Street S.
Customer Window, Mail Stop Petition
Crystal Plaza Two, Lobby, Room 1B03
Arlington, VA 22202

Telephone inquiries concerning this matter may be directed to the undersigned at (571)272-3231.



Douglas I. Wood
Senior Petitions Attorney
Office of Petitions

²See Krahn v. Comm'r, 15 USPQ2d 1823, 1825 (E.D. Va. 1990).